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UNCLAS SECTION 01 OF 02 PRETORIA 000169

SIPDIS

STATE FOR OES AND EB AND OES/ETC/VILLEGAS, ALSO AF/S
USDA FOR FAS, GIPSA AND APHIS
STATE PASS USTR FOR VESPINEL AND PCOLEMAN

SENSITIVE

E.O. 12958: N/A

TAGS: [EAGR](#) [ETRD](#) [SENV](#) [TBIO](#) [SF](#)

SUBJECT: SOUTH AFRICA: ACCESS TO GENETIC RESOURCES AND
BENEFIT-SHARING

REFS: A) STATE 269625; B) 04 PRETORIA 5363; C) 04 PRETORIA
5345; D) 04 PRETORIA 5285

SENSITIVE BUT UNCLASSIFIED, PROTECT ACCORDINGLY

1. (U) 1. Background and introduction.: South Africa's National Environmental Management: Biodiversity Act became law in mid-2004. Chapter 6 of the Act deals with Bioprospecting, Access and Benefit Sharing, and Chapter 7 addresses the issuance of permits authorizing the use or export of indigenous biological resources for bioprospecting or other research. Chapter 8 of the Biodiversity Act gives the Minister of Environmental Affairs and Tourism broad authority to make regulations that: designate the relevant issuing authorities; set requirements for and amount payable in benefit-sharing and material transfer agreements; and govern issuance of permits. Post will forward an electronic version of the Act to OES/ETC. The Act is also available in pdf format at www.deat.gov.za under the left-side "Policy and Legislation" menu.

2. (SBU) Officials at the Department of Environmental Affairs and Tourism (DEAT) are presently drafting implementing regulations for the Act., with an April 2005 deadline. We assume that officials plan to will have to integrate the Act with other relevant legislation and procedures dealing with plant genetic resources and implemented by the National Department of Agriculture (NDA). One involved official told EST Officer that the timeframes for implementation are staggered. The first deadline is April 2005; the deadline for bioprospecting provisions is January 2006. Therefore, a. At this time, many of the procedural questions raised in Ref A do not have clear answers. Below we try to answer as many questions as possible based on the new law and existing procedures, and with some informal feedback from government contacts, in the interest of providing a timely response. We also have made an official request for information to national focal point Maria Mbengashe, Chief Director of Biodiversity and Heritage at the Department of Environmental Affairs and Tourism. In light of the role played by the National Department of Agriculture (NDA) in managing plant genetic resources, FAS Pretoria has also shared the questions with relevant NDA officials. Information below is keyed to question themes listed in Ref A para 18. End Background and Introduction..

LEGISLATION, REGULATION -- RESEARCH ON BIOLOGICAL RESOURCES

32. (U) The research and collection of biological and genetic resources will be governed by the 2004 Biodiversity Act, as well as existing laws on Plant Improvement, Plant Breeders Rights and Genetically Modified Organisms that affect plant genetic resources.

MOVEMENTS OF BIOLOGICAL SPECIMENS

4. (U) The Biodiversity Act requires permits for bioprospecting involving indigenous biological resources and for the export of indigenous biological resources for bioprospecting and other research. The Act refers to "issuing authorities" that have various responsibilities under the Act-including the issuance of permits to export, but does not specify which government departments and agencies can serve as "issuing authorities." Sources tell us that DEAT will be designated as an issuing authority; possibly we assume that both the DEAT and also provincial authorities and the National Department of Agriculture (NDA), but "nothing has been decided yet."

5. (U) will be issuing authorities.

Chapter Five of the Biodiversity Act deals with "Species and Organisms Posing Potential Threats to Biodiversity" and, through permits and lists, governs activities (importing is not specified) involving alien species and invasive species. Chapter Five also empowers the Minister to require that an environmental assessment be conducted before issuing a permit for release of any genetically modified organism that the Minister believes "may pose a threat to any indigenous

species or the environment." The Genetically Modified Organisms Act of 1997 governs the import and release of genetically modified specimens and permits are issued by the GMO Registrar, part of the NDA, following approval by a multi-agency GMO Executive Council.

MUTUALLY AGREED TERMS FOR ACCESS, USE OF GENETIC RESOURCES

16. (U) Chapter Six of the Biodiversity Acts describes requirements for benefit-sharing and material transfer agreements. The Act mentions a prescribed format, which we assume forthcoming uture implementing regulations will elaborate. The Act requires agreements to set out the manner in which and extent to which the indigenous biological resources are to be utilized but the Act does not make specific differentiations among uses for basic science, commercial development, and agricultural research.

STATUS OF MUTUALLY AGREED TERMS, PRIOR INFORMED CONSENT

17. (U) The Biodiversity Act attempts to protect stakeholders' interests by requiring the issuing authority to consider and protect the interests of any person who provides access to the genetic resources and any indigenous community whose traditional uses, knowledge or discoveries related to the indigenous biological resource contribute to or form part of the proposed bioprospecting or research. If such an "interest" exists on the part of stakeholders, the issuing authority may issue a permit only if (a) "the application has disclosed all material information relating to the relevant bioprospecting to the stakeholders" and on the basis of that disclosure has obtained the prior consent of the stakeholder for the provision of or access to such resources and to the knowledge of or discoveries about the indigenous biological resources; (b) the applicant and stakeholder have entered into a material transfer agreement (where relevant) and a benefit-sharing agreement; and (c) the Minister of Environmental Affairs and Tourism has approved the material transfer and benefit sharing agreements. The issuing authority at its discretion may facilitate negotiations to ensure that benefit-sharing and material transfer agreement negotiations are carried out on "an equal footing," but the Act does not task the authority with negotiating specific contracts. If the Minister so requests, the issuing authority must ensure that any benefit-sharing arrangement agreed upon between the applicant and stakeholder is fair and equitable.

18. (U) The Act also establishes a Bioprospecting Trust Fund, "into which all moneys arising from benefit-sharing agreements and material transfer agreements, and due to stakeholders, must be paid, and from which all payments to, or for the benefit of, stakeholders must be made." The Act also establishes the South African National Biodiversity Institute (Ref D). A DEAT source told EST Officer that the provision of information to foreign researchers seeking to obtain research/collecting/import/export permits is a discretionary function of the new SANBI.

Chapter 8 of the Biodiversity Act gives the Minister of Environmental Affairs and Tourism broad authority to make regulations that: designate the relevant issuing authorities; set requirements for and amount payable in benefit-sharing and material transfer agreements; and govern issuance of permits.

19. (U) Post will forward via septel any additional information received in response to written queries made to the National Department of Agriculture and the Department of Environmental Affairs and Tourism.

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